

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**JAMES EARL ELLIS,
Complainant,**

DOCKET NO. EMra78120950

vs.

**INDIANA UNIVERSITY NORTHWEST,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now James A.. Lang, Chairman of the Indiana Civil Rights Commission ("ICRC"), and enters his Recommended Findings of Fact, Conclusions of Law and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes now Complainant, James Earl Ellis ("Ellis"), by counsel, and files his objections to said recommended which Objections are in words and figures as follows:

(H.I.)

And comes not Respondent, Indiana University Northwest, in written response thereto.

And comes now ICRC, having held a hearing on Ellis' Objections on Friday, March 19, 1982, at which arguments of counsel for Ellis and Indiana University were heard, and having considered the above and being duly advised in the premises, finds and rules as follows:

IT IS ORDERED:

1. The Finding of Fact, Conclusions of Law, and Order recommended by the Chairman in his recommended decision should be, and the same hereby are, adopted by ICRC as its own.

Dated: April 16, 1982

**THE INDIANA CIVIL RIGHTS COMMISSION
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Indianapolis, Indiana 46204**

**STATE OF INDIANA)
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COUNTY OF MARION)**

**JAMES EARL ELLIS,
Complainant,**

DOCKET NO. EMra78120950

vs.

**INDIANA UNIVERSITY NORTHWEST,
Respondent.**

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Respondent, by counsel, and files its Motion to Dismiss, which Motion is as follows:

(H.I.)

And comes now Complainant, by counsel, and files his Motion in Opposition to the Motion to Dismiss, which Motion is as follows:

(H.I.)

And comes now James A. Lang, Chairman of the Indiana Civil Rights Commission (hereinafter "ICRC"), having considered the above and being duly advised in the premises, recommends the entry of the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Ellis filed his complaint with the Gary Human Relations Commission (hereinafter "GHRC") on or about May 22, 1975, alleging that he had been terminated from employment on March 11, 1975, because of his race.
2. By letter dated October 2, 1978, GHRC notified Ellis that under its new ordinance of September 5, 1978, and revised Indiana Law (presumably IC 22-9-12.1), it had no authority over Respondent as a state agency, that his complaint was dismissed on September 21, 1978, and that he would have 90 days from that date to file a complaint with ICRC.
3. Complainant filed his complaint contesting his 1975 termination with ICRC on or about December 7, 1978.
4. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. In *City of Bloomington v. Hudgins* 1978), ____Ind. App. ____, 383 N.E.2d 400 (on Petition for Rehearing), the Court of Appeals held ineffective the attempt of the General Assembly in §3 and 4 of Acts 1978 P.L. 123 to retroactively confer jurisdiction and power on local human rights agencies created pursuant to IC 22-9-1-12, which was held unconstitutional in *Indiana University v. Hartwell* (1977), ____Ind. A[. ____, 367 N.E.2d 1090.
2. At the time the complaint was filed with GHRC, therefore GHRC had no legal existence and no power to act; the complaint cannot be deemed to have been filed with ICRC as of May 25, 1975, pursuant to ICRC Rule 2.5(B), 910 IAC 1-2-4(B), because there was no "authority of IC 22-1-1-12" as required by the rule.

3. Because GHRC had no legal existence or authority to act, the complaint filed with it had no legal existence, and therefore GHRC's action dismissing the complaint was a nullity and not a "final decision" of a local agency within the meaning of IC 22-9-1-3(o).
4. Even if the doctrine of equitable tolling may be applied to the 90 day filing limit in IC 22-9-1-3(o), this is not an appropriate case because Ellis waited to file his complaint with ICRC until more than one (1) year after the decision in *Indiana University v. Hartwell, supra*.
5. The complaint was not timely filed with ICRC.
6. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Respondent's Motion to Dismiss should be, and the same hereby is, granted.
2. Ellis's complaint should be, and the same hereby is dismissed:

Dated: January 22, 1982